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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * * * *

R.F. MACDONALD CO., CLEAVER-
BROOKS, INC.,

Plaintiffs,

v.

SIERRA BOILER SERVICE, INC., PYRO
COMBUSTION AND CONTROLS, INC.,
CANDICE GEORGE, THOMAS WILEY,
and GARY PFIZENMAYER,

Defendants.

Case. No. 3:21-CV-00045-APG-WGC

**STIPULATION AND ORDER FOR
ENTRY OF CONSENT JUDGMENT IN
FAVOR OF PLAINTIFFS R.F.
MACDONALD CO. AND CLEAVER-
BROOKS, INC.**

STIPULATION FOR ENTRY OF CONSENT JUDGMENT

Plaintiffs R.F. MacDonald Co. (“MacDonald”) and Cleaver-Brooks, Inc. (“Cleaver-Brooks”, and together with MacDonald, the “Plaintiffs”) and Defendants Sierra Boiler Service, Inc., Pyro Combustion and Controls, Inc., Candice George (“George”), Thomas Wiley (“Wiley”), and Gary Pfizenmayer (collectively, “Defendants”), by and through their undersigned counsel of record, stipulate and agree as follows:

1. On January 19, 2021, Plaintiffs filed a Complaint for injunctive relief and damages against Defendants. (*See* Compl. ECF No. 1.) On January 19, 2021, the Plaintiffs filed a Motion for Temporary Restraining Order (*see*, ECF No. 3) and a Motion for Preliminary Injunction (“PI”) (*see*, ECF N. 4), which Defendants opposed in part (*See*, Response, ECF No. 24). A Temporary Restraining Order (“TRO”) was issued on February 8, 2021. (*See*, TRO, ECF No. 30.) On March 1, 2021 and March 2, 2021, a hearing was held on Plaintiffs’ Motion for Preliminary Injunction (“PI”). On March 3, 2021, the Court granted a Preliminary Injunction. (*See*, ECF No. 38.) On March 30, 2021, Plaintiffs filed an Amended Complaint (ECF No. 45) removing certain of MacDonald’s claims against Wiley and George, individually, which are subject to the parties’ arbitration agreement, and initiated those individual claims against Wiley and George, individually, before the American Arbitration Association (“AAA”). Thereafter, the parties engaged in settlement negotiations and stipulated to stay this case and the AAA claims. (*See*, ECF No. 57.)

2. This Court has subject-matter and personal jurisdiction over the Defendants.

3. Without admitting liability, Defendants nevertheless wish to resolve this matter and they hereby consent to entry of judgment in the above-captioned case and entry of the following Consent Judgment against them. Plaintiffs desire to resolve their claims without further litigation. The parties therefore executed a Memorandum of Understanding on June 25, 2021 and a Settlement Agreement on July 19, 2021.

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1 4. Entry of this Consent Judgment will resolve this civil action and the claims raised
2 in the Amended Complaint. The parties' Settlement Agreement additionally provides for
3 resolution of MacDonald's claims in the AAA arbitration claims against Wiley and George.

4 5. The parties waive the entry of findings of fact and conclusions of law under Rules
5 52 and 65 of the Federal Rules of Civil Procedure.

6 6. The Consent Judgment will constitute the final judgment in this matter. The
7 Defendants waive the right to appeal from this judgment and will bear their respective costs,
8 including any attorney's fees or other expenses of this litigation.

9 7. This Court should retain jurisdiction over this matter for the purpose of
10 implementing and enforcing this Consent Judgment. If Defendants violate the Consent Judgment,
11 Plaintiffs reserve all rights including, without limitation, to obtain a restraining order, preliminary
12 injunction, or to seek damages, declarative, or injunctive relief for any violation of this Consent
13 Judgment.

14 8. Unless defined in this Stipulation, capitalized terms shall contain the same meaning
15 as defined by the parties in their MOU. For purposes of this Stipulation, the parties agree that
16 "Trade Secret" shall mean information, including, without limitation, a formula, pattern,
17 compilation, program, device, method, technique, product, system, process, design, prototype,
18 procedure, computer programming instruction or code that: (1) Derives independent economic
19 value, actual or potential, from not being generally known to, and not being readily ascertainable
20 by proper means by the public or any other persons who can obtain commercial or economic value
21 from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the
22 circumstances to maintain its secrecy.

23 9. For purposes of this Stipulation, the parties agree that "Confidential Information"
24 means, with respect to either Plaintiff, information accessible to or created while George and
25 Wiley were employed by MacDonald, treated as confidential, and subject to reasonable safeguards
26 to limit access to the information, except that Confidential Information will not include
27 information that is publicly available without breach of any agreement or which is disclosed by a
28 third party that has a right to disclose such information (i.e., without breach of any agreement or

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violation of law by the third party). The parties agree that certain documents or materials include and/or shall be treated as Confidential Information provided that such documents or materials have not been made publicly available without breach of any agreement or which is disclosed by a third party that has a right to disclose such information, as enumerated by the parties' MOU fully executed as of June 25, 2021 ("MOU") at paragraph 1(p)(i)-(xviii).

10. For purposes of this Stipulation, the parties agree that the term "Agreed Project List" means the list provided by MacDonald to Defendants of no more than sixteen (16) projects in MacDonald's active pipeline of upcoming projects that are either actively in the process of bidding or are expected to come up for bid within approximately the next year, generated from the list of CRM Opportunities previously maintained by George, meeting the following criteria: (a) Job type is either sale of new boiler(s) (with or without labor) including replacement boiler, new equipment sales/installation but not service contracts or "aftermarket" jobs (replacement of parts and/or repairs); (b) Job must not already be awarded to Sierra Boiler or Pyro as of the effective date of the MOU; and (c) the Job cannot be physically located in Clark County. A redacted copy of the Agreed Project List is attached hereto as Exhibit 1.

11. The parties, after consultation with independent counsel of their choice, agree that the Agreed Project List and the below restraints are reasonable, narrowly tailored in scope, anticipated duration, and geographic territory (i.e., where Wiley and George serviced customers of Plaintiffs during the final year of their employment), and are necessary to protect Plaintiffs' legitimate business interests including their Trade Secret and Confidential Information in Defendants' possession. Therefore, the parties each agree to the terms of the Consent Judgment set forth below:

CONSENT JUDGMENT ORDER

The Court, having reviewed the parties' Stipulation, and good cause appearing therefore, GRANTS the requested Consent Judgment as follows:

IT IS ORDERED that Defendants shall turn over all of the Plaintiffs' Confidential Information and Trade Secrets that are contained in or on any of their personal email accounts, devices, iCloud account(s) and DropBox account(s) by providing access to such accounts and

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1 devices to an expert retained by the parties, Global Digital Forensics, who is authorized to delete,
 2 permanently purge, and render unrecoverable the documents and files containing Confidential
 3 Information and/or Trade Secrets.

4 **IT IS FURTHER ORDERED** that Defendants shall return to MacDonald's counsel or
 5 Cleaver-Brooks' counsel, respectively, hard copies of any and all of MacDonald's and/or Cleaver-
 6 Brooks' Confidential Information and/or Trade Secrets in their possession, including any item
 7 listed at 1(p)(i)-(xvii) of the MOU, and any notes or derivative materials Defendants generated
 8 based on such materials.

9 **IT IS FURTHER ORDERED** that, since Defendants took Trade Secret and Confidential
 10 Information, and are in possession of (i) Cleaver-Brooks' training and certification materials and
 11 (ii) MacDonald's project pipeline/opportunities list, Plaintiffs' pricing information, and
 12 MacDonald's "target list" of upcoming projects for Plaintiffs' Customer(s), which MacDonald
 13 information is projected to retain its relevance and competitive advantage for at least one year,
 14 Defendants shall not participate in, pursue, bid, or otherwise request or accept an award of a
 15 contract to perform work on any of the 16 projects identified on the Agreed Project List, including
 16 if the "Topic" (as described on the Agreed Project List) or scope of the project may vary or differ
 17 from the anticipated scope or Topic currently identified, until such project is "Completed" as
 18 defined in the MOU. Once the project has been Completed, Defendants will not be prohibited
 19 from seeking a contract to service the boiler or equipment that is discussed on a going forward
 20 basis. Any Customer who contacts any Defendant to bid on such project, shall be immediately
 21 informed by Defendant(s) that Defendants are contractually precluded from performing the work
 22 or bidding on the project.

23 **IT IS FURTHER ORDERED** that, to the extent that any Defendant has knowledge of
 24 Plaintiffs' Trade Secrets and/or Confidential Information (notwithstanding return/destruction of
 25 documents), each Defendant shall not directly or indirectly use or disclose such information.

26 **IT IS FURTHER ORDERED** that Wiley and/or George shall notify any new or other
 27 employer or principal of the existence of but not the contents of the Agreed Project List for so
 28 long as any project on the Agreed Project List is not "Completed" and to immediately notify

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1 Plaintiffs' counsel in writing if he/she becomes hired by another competitor of Plaintiffs, so that
 2 Plaintiffs' counsel can, in turn, confirm that his/her new or other employer or principal
 3 understands the foregoing limitations and obligations.

4 **IT IS FURTHER ORDERED** that, if George and Wiley are asked by any subsequent or
 5 other employer or principal to participate in any way to obtain for that employer or principal a
 6 project on the Agreed Project List, Wiley or George shall advise the employer or principal that
 7 he/she is prohibited from directly or indirectly participating in any manner in the marketing,
 8 solicitation, project development, project design/engineering, or communications (including being
 9 listed as a cc, participating on calls, participating in lunches or client visits, participating in
 10 preparation of request for proposal (RFP) responses or "pitch" materials or being listed on such
 11 materials) for that project, pursuant to the Agreement, but Wiley and George shall not disclose the
 12 remaining contents of the Agreed Project List.

13 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction over this action for
 14 purposes of implementing, enforcing and adjudicating any other dispute arising out of, or in
 15 connection with, the parties' MOU, Settlement Agreement or this Judgment and Order.

16 **IT IS FURTHER ORDERED** that Defendants shall be jointly and severally obligated to
 17 pay Plaintiffs the sum of \$115,000 as partial reimbursement of Plaintiffs' legal fees, within five
 18 (5) days of execution of the Settlement Agreement.

19 **IT IS FURTHER ORDERED** that Defendants shall timely pay the costs of the expert's
 20 services as set forth in the parties' MOU at paragraph 4-8.

21 **IT IS FURTHER ORDERED** that this is a final judgment that resolves all outstanding
 22 claims between the parties.

23 **IT IS SO ORDERED.** The Clerk is hereby directed to enter Judgment, pursuant to Rule
 24 58(b)(2) of the Federal Rules of Civil Procedure.

25
 26 Dated: July 21, 2021


 UNITED STATES DISTRICT JUDGE

McDONALD CARANO
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APPROVED AS TO FORM AND CONTENT THIS 19th DAY OF JULY, 2021 BY:

McDONALD CARANO LLP

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PLAINTIFF R.F. MACDONALD CO.

PLAINTIFF CLEAVER-BROOKS, INC.

/S/ James D. MacDonald

James D. MacDonald, its CEO

/S/ Michael P. Donahue

Michael P. Donahue, its VP, Account
Management

DEFENDANT SIERRA BOILER SERVICE,
INC.,

DEFENDANT PYRO COMBUSTION AND
CONTROLS, INC.

/S/ Candice George

Candice George, its President

/S/ Gary Pfizenmayer

Gary Pfizenmayer, its President

DEFENDANT CANDICE GEORGE

DEFENDANT GARY PFIZENMAYER

/S/ Candice George

DEFENDANT THOMAS WILEY

/S/ Gary Pfizenmayer

/S/ Thomas Wiley

EXHIBIT A: AGREED PROJECT LIST (REDACTED)

CONFIDENTIAL AND SETTLEMENT PRIVILEGED. DO NOT DISTRIBUTE.
INADMISSIBLE FOR ANY PURPOSE FFE 408

End User	Topic	Act Quote Date	Est Ship Date	Est. Revenue	City	County
Redacted - Confidential	Redacted 13th FL PVI Replacement	06/04/18	08/06/21	45,850	Reno	Washoe
	Redacted 19th FL PVI Replacement	04/02/20	03/12/21	38,444	Reno	Washoe
	Redacted 1st - Redacted 1 HW Boiler Replacement - Redacted 1st (# 031-157-031-29-08)	07/23/20	04/05/21	39,139	Sacramento	Sacramento
	Redacted HP IWT Budget	12/12/19	02/04/22	1,785,209	Carlin	Elko
	Redacted Boiler Replacement (Serial #s A04G0488 & A04F04791)	08/30/19	06/07/21	55,415	Carson City	Carson
	Redacted Building 104-4 Boiler Replacement	06/18/20	08/06/21	193,911	Hawthorne	Mineral
	Redacted 20 HP CFH (Bldg. 299, Fulton Pulse Boiler Model plp 750 NB#86046)	07/10/20	07/23/21	78,006	Fallon	Churchill
	Redacted - MSM-700-5000-200HW	02/11/20	11/05/21	118,997	Elko	Elko
	Redacted Phoenix - New Boiler Options	01/07/20	07/05/21	466,053	Battle Mountain	Lander
	Redacted - Redacted - 152798 New IWT Rollers	12/10/21	12/10/21	2,405,292	Golconda	Humboldt
	Redacted - Redacted - Steam Plants	05/13/20	07/09/21	716,512		Humboldt
	Redacted - Phase 2 Domestic Boiler Replacement	02/25/20	05/31/21	46,969	W. Wendover	Elko
	Redacted CUP and Material Management Building	05/01/20	02/04/22	1,800,000	Reno	Washoe
	Redacted Specialty Care Center			1,000,000	Reno	Washoe
	Redacted Digester Boiler Budget	06/04/18	02/04/22	755,861	Reno	Washoe
	Redacted - Fire Room Booster Pump	03/06/20	04/05/21	39,349	Reno	Washoe

Signature: Gary Pfenmayer
Gary Pfenmayer (Jul 19, 2021 10:24 PDT)

Email: gary@pyrocombustion.com

Signature: Tom Wiley
Tom Wiley (Jul 19, 2021 09:50 PDT)

Email: tom@sterraboiler.com

APPROVED AS OF JULY 15, 2021 BY:

Candice George (for herself and Sierra Boiler Service, Inc.)

GP Gary Pfenmayer (for himself and Pyro Combustion and Controls, Inc.)

TW Thomas Wiley

Agreed protected list 7-15-2021

Final Audit Report

2021-07-19

Created:	2021-07-19
By:	Candice George (candice@sierraboiler.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAatvGUONMdsu39iSDtfPBkx2lGcOSZetW

"Agreed protected list 7-15-2021" History



Document created by Candice George (candice@sierraboiler.com)

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Document e-signed by Tom Wiley (tom@sierraboiler.com)

Signature Date: 2021-07-19 - 4:50:34 PM GMT - Time Source: server- IP address: 174.208.105.122



Agreement completed.

2021-07-19 - 4:50:34 PM GMT



Adobe Sign